

IN THE UNITED STATES DISTRICT COURT FOR
THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

UNITED STATES OF AMERICA)
)
)
) CASE NO. 2:08-CR-156-WKW
v.)
)
DONALD EARL MCCAIN)

ORDER

On January 14, 2009, Defendant Donald Earl McCain (“Mr. McCain”) filed a Motion to Dismiss (Doc. # 30) one count of the two-count indictment, based upon a violation of the Double Jeopardy Clause of the Fifth Amendment, and Motion for a Bill of Particulars (Doc. # 29). The government filed a Bill of Particulars (Doc. # 43) on March 16, 2009, and an Amended Bill of Particulars (Doc. # 51) on April 27, 2009. On March 20, 2009, the government filed a Response (Doc. # 45) to the motion to dismiss, to which Mr. McCain filed a Reply (Doc. # 46). A hearing was held before Magistrate Judge Capel on the motion on April 9, 2009, and on May 5, 2009, Judge Capel filed a Recommendation that the court deny Mr. McCain’s Motion to Dismiss. (Doc. # 55.) Mr. McCain filed objections to the Recommendation on May 18, 2009, grounding his argument in interpretations of congressional intent. (Doc. # 57.)

Having conducted an independent and *de novo* review of those portions of the Recommendation to which objection is made, *see* 28 U.S.C. § 636(b)(1), the court finds that Mr. McCain’s objections restate the content of his Reply (Doc. # 46) and that Judge Capel has accurately and thoroughly addressed the reasons for the motion’s failure.

Accordingly, it is ORDERED that:

1. Mr. McCain's objections (Doc. # 57) are OVERRULED.
2. The Recommendation (Doc. # 55) is ADOPTED.
3. Mr. McCain's Motion to Dismiss (Doc. # 30) is DENIED.

DONE this 19th day of May 2009.

/s/ W. Keith Watkins
UNITED STATES DISTRICT JUDGE